

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JONATHAN HICKS,

Plaintiff,

CASE No. 1:21-CV-1021

v.

HON. ROBERT J. JONKER

KERRY KNIGHT,

Defendant.

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**ORDER APPROVING AND ADOPTING  
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Berens' Report and Recommendation in this matter (ECF No. 46) and Plaintiff's Objection to the Report and Recommendation (ECF No. 47). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections.

After its review, the Court finds the Magistrate Judge's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends granting the defense Motion for Summary Judgment (ECF No. 37) on the basis that Plaintiff failed to establish an Eighth Amendment violation. In his Objections, Plaintiff primarily reiterates the arguments that have already been thoroughly considered by the Magistrate Judge. Some assertions are blatantly refuted by the video recording that is referenced by both sides. *See Scott v. Harris*, 550 U.S. 372, 380 (2007) (“When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.”). Nothing changes the fundamental analysis. The Magistrate Judge carefully and thoroughly considered the record, the parties’ arguments, and the governing law. Plaintiff fails to come to grips with the basic issue that Defendant Knight was stopping a prisoner fight in the best way he could at the time, in other words, applied force in a good-faith effort to restore discipline. This is not an Eighth Amendment violation.

**ACCORDINGLY, IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge (ECF No. 46) is **APPROVED AND ADOPTED** as the opinion of the Court.

**IT IS FURTHER ORDERED** that Defendant Knight’s Motion for Summary Judgment is **GRANTED**. This case is **DISMISSED**.

A separate Judgment shall issue.

The Court discerns no good-faith basis for appeal of this matter. *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997); 28 U.S.C. § 1915(a)(3).

Dated: March 31, 2023

/s/ Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE